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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

CAMRYN LOWELL KNIGHT,

Defendant and Appellant.

C081400

(Super. Ct. No. 15F6154)

In exchange for a stipulated four-year prison sentence and the dismissal of five other counts, defendant Camryn Lowell Knight pleaded no contest to first degree residential burglary. That same day, he was sentenced to serve the stipulated term. But the trial court did not obtain the parties' waiver of a probation report before sentencing. On appeal, defendant contends the trial court's failure to order a probation report requires reversal. The People concede error but maintain the error is harmless. We agree the error is harmless and will affirm the judgment.

BACKGROUND

The day of the plea and sentencing, the prosecution announced a resolution: “[Defendant] is going to plead to Count 4 to the residential burglary with a person present allegation for the mid-term of four years with an immediate sentencing, and we have credits.” He added, the remaining charges would be dismissed. Defense counsel responded: “That is correct, Your Honor.”

Defendant then pleaded no contest to first degree residential burglary with a person present. (Pen. Code, §§ 459, 462, subd. (a).) The court then asked defense counsel if he was ready to proceed to sentencing. Counsel responded: “Yes, Your Honor. Waive Time, waive arraignment, no legal cause.” The court then imposed the agreed upon four-year prison term.

The hearing minute order states: “[D]efendant waives referral to the probation department for report and recommendation, and requests immediate sentence.” But the hearing transcript makes no mention of a probation report waiver.

DISCUSSION

On appeal, defendant contends the trial court erred in failing to order and review a probation report before sentencing. He argues the error requires reversal, reasoning the error cannot be evaluated under *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*) because the record does not indicate what the report may have contained. The People concede error but maintain it was harmless. We accept the concession and conclude the error was harmless.

The failure to order a probation report is reviewed for *Watson* error. (*People v. Dobbins* (2005) 127 Cal.App.4th 176, 182.) Under the *Watson* test, reversal is required “when the court, ‘after an examination of the entire cause, including the evidence,’ is of the ‘opinion’ that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*Watson, supra*, 46 Cal.2d

at p. 836.) But the *Watson* court cautioned that the test, “must necessarily be based upon reasonable probabilities rather than upon mere possibilities” (*Id.* at p. 837.)

Here, defendant offers no more than “mere possibilities.” He argues, “because there is no current report, there is no way of telling whether new facts would have affected the judge’s sentencing decision.” This is no more than speculation that something in a probation report could have compelled a better outcome — at best a mere possibility. And because defendant offers nothing to elevate that mere possibility into a reasonable probability of a more favorable outcome, the error was harmless under *Watson, supra*, 46 Cal.2d 818.

Indeed, the record reflects the outcome was precisely what the parties desired. The parties had agreed to a four-year term, with the prosecution explaining it was for “immediate sentencing, and we have credits.” Defense counsel added: “That is correct, Your Honor.” Everything indicates the parties wished to go forward with the stipulated sentence. And nothing indicates defendant desired a probation report or had information that might compel a better outcome.

By contrast, the cases upon which defendant relies involved the trial court denying a continuance following an untimely or absent probation report — and neither case involved a stipulated prison term. (See *People v. Leffel* (1987) 196 Cal.App.3d 1310, 1315-1316, 1318-1319 [defense counsel did not receive a timely probation report, and the trial court denied a continuance]; *People v. Conners* (2008) 168 Cal.App.4th 443, 451-452, 457 [no supplemental probation report was prepared, and the trial court denied a continuance].)

Therefore, under the circumstances, the error in not obtaining a probation report waiver was harmless.

DISPOSITION

The judgment is affirmed.

_____/s/
HOCH, J.

We concur:

_____/s/
ROBIE, Acting P. J.

_____/s/
DUARTE, J.